

**Liggett**

T1  
Budget

**Memorandum**

PERSONAL AND CONFIDENTIAL  
LAWYERS WORK PRODUCT

JPH

To: James Scott Hill

Date: 4/10/75

From: F. P. Haas

Subject: \_\_\_\_\_

I have had the opportunity to peruse the draft of the memorandum you sent to Mr. Sloat on April 8 with reference to reduction of certain "related costs", and respectfully dissent from the conclusions you reached, based on over twenty years of fairly concentrated experience in the tobacco and health and related areas.

COUNCIL FOR TOBACCO RESEARCH

(Budgeted for \$45,000)

This item has two facets: Literature Storage and Retrieval, and what is known as Special Projects; i.e., scientific research projects of a quality sufficient to bear the imprimatur of the Scientific Director of CTR, which have been approved by management on my recommendation and which have the potential of arming our counsel and the industry with research helpful in court, in Congress, or elsewhere in adversary situations. Both services are paid through CTR on a share of market basis (our share for 1975 being 4.60 percent). Lorillard, however, has never participated in the Retrieval System. Also, it never has had to defend a cancer case, and if it does someday, it will be asked to ante-up its fair share of accumulated expenses. With this exception, all six companies participate in both programs on the basis of share of market, except where Liggett & Myers has elected not to do so in particular Special Projects.

As you are aware, Liggett & Myers does not participate in CTR generally, and has not for some years, our position being that it was using "buckshot" and not a "rifle".

The total commitments already made for Special Projects for 1975 amount to \$112,865 (our share being about \$5,200). As of now, there are no Special Projects commitments for 1976, but this is not to say proposals will not be made.

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I have no independent budget figures for the storage and retrieval system, but assume it represents the balance of \$45,000 budgeted, or \$39,800. (Legal files indicate we were billed about \$31,000 in 1974).

This is a very sophisticated system which has been, and may be expected to be, useful not only in litigation but in other adversary situations. In fact, Liggett & Myers has had more cancer trials than any other company (5) and it can be suggested that others have helped us by continuing their support of this program (and the Central Files), for it would have been astronomically expensive to have had to accomplish the same end purposes alone. And the purposes it serves are a prime necessity in my considered opinion.

THE TOBACCO INSTITUTE

(Budgeted for \$230,000)

The budgeted figure appears to be overstated. The Tobacco Institute's budget for 1975, less the advertising contingency, is \$2,631,885 (our share being \$130,051 after accounting for American's \$250,000 contribution, or about \$86,000 less than budgeted, which compares with average actual cost of Tobacco Institute participation for 1971-74, inclusive, of about \$130,000). Even if the advertising contingency were to be spent, which seems problematical, we should still be about \$70,000 less than budget.

I believe that TITL (the testing laboratory used to monitor FTC lab figures for "tar" and nicotine) is about to be put on a share of market basis, since American (the only company not yet approached) would effect a savings. Its 1975 budget is \$270,900. Shared equally, each company would pay \$45,150. On a market basis, the cost would be \$14,446, a savings of some \$30,000.

You recommended that we continue our membership in The Tobacco Institute, but "at a reduced rate". It should be borne in mind that specific rates of dues and assessments of the Institute are contained in the By-laws. Unless the By-laws are changed, there is no way to continue membership at a reduced rate.

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I repeat my deep-seated belief that membership in the Institute has effected a savings to us over the years as compared with "going it alone", and I would much rather see Liggett & Myers be a party to discussions there than to put it in a posture where others dictate industry policy without regard to our position. Joe Greer's memorandum of January 15 (copy attached) outlines other benefits derived from continued membership. (Add as an example that we were unable to get the Secretary of Labor to approve our separate union lines of progression, a condition which we attached to the effectiveness of an agreement to install such separate lines, until Earle Clements, then President of the Tobacco Institute, took the matter under his wing, and obtained the Labor Secretary's consent May 31, 1967, after months of frustrating effort exerted internally). This was a great relief to the manufacturing group.

TOBACCO TAX COUNCIL

(Budgeted for \$90,000)

After deducting estimated dues and subscriptions by leaf organizations, warehousemen, exporters, etc., the 1975 Tobacco Tax Council budget is about \$1,590,000, and our share is \$73,140, or about \$17,000 below budget, including a greatly expanded legislative program which has had our tacit approval. The budget was approved December 11, 1974 and must be regarded as a legal commitment.

HARVARD PROJECT

(Budgeted for \$23,000)

I believe \$11,913 of this has been paid for this year. There is a substantial possibility that this entire project may wash out, if it can be done gracefully, but we do have a contractual commitment which does not expire until late in 1977. Discussions are to be held with Dr. Huber on May 15 at CTR. Expenses for this project are based on share of market after relatively minor contributions from Tobacco Associates and U. S. Tobacco Company.

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WASHINGTON UNIVERSITY PROJECT  
Cancer Immunology

(Budgeted at \$23,000)

This is a contractual commitment which does not expire until April, 1978. American does not participate, but Larus and Tobacco Associates do, in a relatively minor way.

CENTRAL FILES, CONSULTANTS

(Cost in 1975, \$70,000)

The law firm of Jacob and Medinger handles these expenses through equal payments by all six companies. This method of disbursing funds was selected to preserve attorneys' work product as best we could. Two accounts are involved: the Central File and Consultants - doctors and scientists whose services are used on a current basis as consultants or as witnesses in current legislative hearings on restrictive smoking in public areas (i.e., smoking poses no real risk for non-smokers), bringing Dr. Burch from England under the aegis of Michigan State (Burch having "bested" Doll in the field of epidemiology, etc.). Others consult in the area of coronary heart disease (Seltzer), epidemiology (Sterling and MacDonald). Were it not for the papers these independent scientists publish, and the advice and counsel we receive from them, our position would be further eroded.

The Central File, or litigation file, is an instrument through which literature collected, stored and retrieved is thoroughly analyzed for counsel's benefit. Central Files also keep current witness files for scientists and doctors so that counsel can in turn prepare for examination or cross-examination. This service has proved less costly and time consuming than having lawyers arduously make the initial analysis. (I know, for in the early years I personally analyzed papers written by Wynder, Ochsner, Overholt, etc. in preparation for early trials, and it was nearly back-breaking).

As suggested, it may well be possible to put these two items on a market share basis, and I volunteer to take this up through other counsel. If achieved, our budgeted cost for these items would be reduced by over \$50,000, from \$70,000 to \$19,300.

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OUTSIDE LEGAL FEES & RESEARCH

(Budgeted at \$180,000 according to your Memo)

The figures underlying the \$180,000 figure are Covington & Burling (\$28,000) and a net accrual charged in one way or another for years of \$150,000 to cover unforeseen cancer litigation expenses.

I do not have a clear understanding as to what other litigation expenses are budgeted, but it should be borne in mind that about \$685,000 was expended last year in prosecuting the FTC case (\$248,000); the Bloomfield litigation (\$223,750); the new leaf cases (\$55,000); and miscellaneous other litigation (cancer cases and related matters, \$34,000; Elkind case, \$11,500, etc.).

Unfortunately, we have no control over who may sue us and what a plaintiff may allege. Our obligation as lawyers is to try as best we can to advise management in such fashion as to minimize the likelihood of creating a situation which is actionable, and yet not unduly tie management's hands in the conduct of its business. The Bloomfield cases were costly, but were prosecuted with the consent of the Board. The possibility of antitrust consequences was inherent in the Perk acquisition. Cancer cases are not as active as heretofore, but in my opinion we should not proceed on the assumption that health oriented litigation is a thing of the past, and each case must of necessity be defended with all force which can be brought to bear. This means staying on top of the relevant scientific fields, through Central Files and the Retrieval System, which have proved invaluable in the past and are highly recommended as a continuing effort by trial counsel. These cases are complex and the loss of one could lead to our being self-insurers; - a result which in my opinion would be most unfortunate.

\* \* \* \*

I agree with you that Earle Clements is a valuable asset, but would suggest that Jack Beatty's services have not been fruitful and could well be discontinued. Savings, \$10,000.

If my estimates and assumptions are correct, and Central Files and Consultants fees were put on a market share basis, and Beatty's services are discontinued, budget is overstated by between \$193,000 and \$213,000. If Harvard Project comes to an end, we will save another \$30,000 in 1976, and perhaps half of that in 1975.

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My recommendations are:

1. To continue with the Storage and Retrieval System, but, as heretofore, evaluate each Special Project as it arises before participating.
2. To continue membership in The Tobacco Institute which, after taxes, represents less than one cent per share. To be sure, American is not a member, but our "tar" and nicotine disclosure problem was solved by a voluntary agreement. American, on its own, outside the Institute, wound up with an FTC Consent Decree in this area - a much more precarious situation. The long run, our costs will be less by maintaining the membership. Of this, I am thoroughly convinced.
3. If expenses must be cut, the Tobacco Tax Council is probably the best place to set a limit on fiscal support, for the others will indeed carry on. This, however, has not entered into my calculations.
4. The Harvard and Washington University Projects are contractual commitments and I believe the former may soon terminate.
5. The other companies should be asked to accede to allocating support for the two Jacob and Medinger Accounts (Consultants, Central Files) on a share of market basis.
6. Further support of Jack Beatty's services should be seriously reappraised.

*J. P. H.*  
F. P. H.

FPH:hb  
Enclosure

cc - R. J. Mulligan  
A. E. Sloat  
J. H. Greer

RC-6033348

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